

R590. Insurance, Administration. (Effective 8-2-2011)

R590-149. Americans with Disabilities Act (ADA) Grievance Procedures.

R590-149-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 31A-2-201(3)(a) and Subsection 63G-3-201(3) of the State Administrative Rulemaking Act. The Insurance Department, pursuant to 28 CFR 35.107, adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35, and Title II of the Americans With Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs or activities of the Insurance Department, or be subjected to discrimination by the department because of a disability.

R590-149-2. Definitions.

(1) "The ADA Coordinator" means the employee assigned by the commissioner to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the department.

(2) "Department" means the Insurance Department.

(3) "Designee" means an individual appointed by the commissioner or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the department affected by a complaint filed under this rule.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" includes caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Qualified Individual" means an individual who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the department. A qualified individual also who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

R590-149-3. Filing of Complaints.

(1) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the department's ADA coordinator, unless the complaint alleges that the ADA coordinator was non-compliant, in which case qualified individuals shall file their complaints with the department's designee.

(3) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the commissioner has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(4) Each complaint shall:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R590-149-4. Investigation of Complaint.

(1) The ADA coordinator or designee shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Subsection R590-149-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk

Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

- (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;
- (b) require facility modifications; or
- (c) require reassignment to a different position.

R590-149-5. Issuance of Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director in writing or in another acceptable suitable format stating what action, if any, should be taken on the complaint.

(2) If the coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or by another acceptable format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R590-149-6. Appeals.

(1) The complainant may appeal the decision of the director to the commissioner by filing an appeal within ten working days from the receipt of the director's decision.

(2) The appeal shall be filed in writing, or in another accessible format reasonably suited to the complainant's ability.

(3) The commissioner may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the commissioner's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The commissioner or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The commissioner may direct additional investigation as necessary. The commissioner shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

- (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

- (b) require facility modifications; or
- (c) require reassignment to a different position.

(6) The final decision shall be issued by the commissioner within fifteen working days after receiving the complainant's appeal and shall be in writing or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the commissioner or designee is unable to reach a final decision within the fifteen working day period, he shall notify the complainant in writing or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a decision.

R590-149-7. Classification of Records.

(1) Records created in administering this rule are classified as "protected" under Subsection 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R590-149-5 or a final decision upon appeal under Section R590-149-6, portions of the record pertaining to the complainant's medical condition shall remain classified as "private" as defined under Section 63G-2-302(1)(b) or "controlled" as defined in Section 63G-2-304, as consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or commissioner shall be classified as "public" information. All other records, except "controlled" records under Subsection R590-149-7(2), shall be classified as "private."

R590-149-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(1) the state Anti-Discrimination Complaint Procedures Section 67-19-32 and 34A-5-107;

(2) the Federal ADA Complaint Procedures 28 CFR 35.170 through 28 CFR 35.178; or

(3) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: insurance ada

Date of Enactment or Last Substantive Amendment: 2011

Notice of Continuation: June 26, 2007

Authorizing, and Implemented or Interpreted Law: 63G-3-201(2)